

Dated 1st February 2016

(1) **TAYLOR WIMPEY UK LIMITED**

- and -

(2) **DAVID GEORGE GRINSTED**

- and -

(3) **TENDRING DISTRICT COUNCIL**

- and -

(4) **ESSEX COUNTY COUNCIL**

**DEED
pursuant to Section 106
of the
Town and Country Planning Act 1990
relating to**

Land South of Cockaynes Lane, Alresford

Planning Application Ref: 14/01823/OUT
Appeal Ref: APP/ P1560/W/15/3124775

THIS AGREEMENT is made the 1st day of February 2016
BETWEEN:

- (1) **TAYLOR WIMPEY UK LIMITED** (company number 01392762) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR (the "Developer");
- (2) **DAVID GEORGE GRINSTED** of Waitoa Road, RDI Brightwater, Nelson, New Zealand but whose address for service in the United Kingdom is care of Chestnut Tree Farm, Framlington Road, Laxfield, Woodbridge, Suffolk, IP13 8HD (the "Owner");
- (3) **TENDRING DISTRICT COUNCIL** of Council Offices, Thorpe Road, Weeley CO16 9AJ (the "Council"); and
- (4) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford CM1 1QH ("the County Council")

known collectively as the "Parties"

WHEREAS

- (A) The Council and the County Council are the local planning authorities for the purposes of the Town and Country Planning Act 1990 as amended (the "Act") for the area within which the Property is situated and are the authorities by whom the planning obligations contained in this Deed are enforceable
- (B) The County Council is the local authority for statutory age education and pre-school age education and childcare for the area within which the Property is situated
- (C) The Owner is the freehold owner of the Property title to which is unregistered
- (D) The Developer submitted the Planning Application to the Council and intends to carry out the Development should the Planning Permission be granted
- (E) The Council refused to grant planning permission pursuant to the Planning Application and the Developer has submitted the Appeal to the Secretary of State
- (F) The Deed is entered into by the Developer the Owner and the Councils pursuant to Section 106 of the Act to secure the planning obligations on the terms set out herein
- (G) The Developer is a party to this Deed for the purposes of the covenant given at Clause 13 in respect of the payment of the Councils' costs associated with this Deed
- (H) The Councils are satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms; are directly related to the Development and fairly and reasonably relate in scale and kind to the Development

NOW THIS DEED WITNESSES as follows:

1. INTERPRETATION

1.1 In this Agreement words and expressions shall have the following meanings:-

"Affordable Housing"	means housing provided to Persons in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices and includes Affordable Rented Housing and/or Intermediate Affordable Housing
"Affordable Housing Plan"	means a plan showing the location and size and tenure of the Affordable Housing Units
"Affordable Housing Price"	means market value for such Affordable Housing Units and which as a minimum covers all costs associated with the planning construction fit out and transfer of the Affordable Housing Units
"Affordable Housing Provider"	means any body or organisation that is permitted by law and whose main function or aim is to provide and/or manage Affordable Housing including a housing association or housing company or trust registered as a provider with the Homes and Communities Agency or its successor or an alternative provider of Affordable Housing or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant in each case nominated by the Owner and approved in writing by the Council AND for the avoidance of doubt the Council may be the Affordable Housing Provider for this purpose
"Affordable Housing Units"	means the Dwellings to be constructed as Affordable Housing in accordance with the Affordable Housing Plan (to be agreed with the Council)

"Affordable Rented Housing"

means housing let by local authorities or Affordable Housing Providers to Persons in Housing Need for rent at up to 80% of local open market rents (including any service charge)

"Allotments"

means the area of the Property upon which the Allotments Scheme is to be carried out

"Appeal"

means the appeal with reference APP/P1560/W/15/3124775

"Chargee"

any mortgagee or chargee (or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee) of the whole or any part of the Affordable Housing Units held by an Affordable Housing Provider or any successors in title to such mortgagee or chargee or receiver or administrative receiver

"Commencement"

means the commencement of the Development by the carrying out of a material operation (as defined by Section 56 (4) of the Act) provided always that:

- (i) any works necessary in undertaking a land survey of or obtaining soil samples from the land whether that be in respect of any requirements for environmental or ecological studies or otherwise;
- (ii) any remedial works on the land necessary to prevent the risk of harm to human health and safety or required in order to remediate the Property or comply with any condition imposed upon the grant of a planning permission or any licence;
- (iii) works of demolition and site clearance including earth works, re-grading and landscape clearance works
- (iv) works of archaeological excavation on the land
- (v) erection of hoardings, temporary enclosures,

fences and other security measures on the Property including any advertisements upon them

(vi) works for the provision and diversion of services

(vii) works on or to internal roads including the provision of haul roads

shall for the purposes of this Deed be deemed not to be works which shall begin the Development and "Commence" and "Commence the Development" and "Commenced" shall be construed accordingly

"Councils"

means Tendring District Council and Essex County Council or any authority which may succeed to their function of enforcing the terms, provisions and planning obligations created by this Deed

"Development"

means the development of the Property pursuant to the Planning Permission

"Dwellings"

means the residential units to be constructed on the Property pursuant to the Planning Permission

**"Early Years and
Childcare Contribution"**

means the Early Years and Childcare Child Pupil Product multiplied by the cost generator of twelve thousand three hundred and fifty two pounds sterling (£12,352) each part adjusted by the percentage change in build costs from the Education Index Point prevailing at April 2014 to the Education Index Point prevailing at the relevant date each part payment is due pursuant to Schedule 3 of this Deed provided always that in the event that the number or type of Qualifying Housing Units constructed as part of the Development alters from that permitted by the Planning Permission then the County Council shall be entitled to revise the said sum accordingly AND such contribution shall be used solely for the Early Years and Childcare Purposes

"Early Years and

means the sum of the Qualifying Flats multiplied by

Childcare Pupil Product"	0.045 plus the Qualifying Houses multiplied by 0.09
"Default Interest Rate"	means 4 percentage points above the base rate of Barclays Bank Plc or if that base rate stops being used or published then at a comparable commercial rate
"Early Years and Childcare Purposes"	means the provision of facilities for the education and/or care of children between the ages of 0 to 4 (both inclusive) within the ward area of Alresford including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Early Years and Childcare Contribution and which provision and/or care shall solely relate to mitigation of the impact of the Development
"Education Contribution"	means the Early Years and Childcare Contribution and the Primary Education Contribution and the Secondary School Transport Contribution
"Education Purposes"	means (as applicable to the relevant contribution) the Early Years and Childcare Purposes and the Primary Education Purposes and the School Transport Purposes
"Education Index"	means the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC Index) or in the event that the PUBSEC Index is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council
"Education Index Point"	means a point on the most recently published edition of the Education Index at the time of use
"Flat"	means a Dwelling that occupies a single floor and /or does not benefit from private outdoor open space for the exclusive use of the residents of the Dwelling and no other persons
"House"	means a Residential Dwelling that does not meet the definition of a Flat

"Housing Needs Register"

means the register maintained by the Council or its nominee for Persons in Housing Need

"Index"

means the "All Items" index figure of the Retail Prices published by the Office for National Statistics or any such alternative replacement or successor to that index for measuring retail price inflation

"Index Linked"

means adjusted in accordance with the following indexation formula:-

$$\frac{A \times B}{C} = D$$

where:

A is the payment pursuant to the relevant clause

B is the last firm (not provisional or estimated) figure published for the Index immediately prior to the date of payment

C is the last firm (not provisional or estimated) figure published for the Index immediately following the date of this Deed

D is the recalculated sum due

"Intermediate Affordable Housing"

means housing at prices and rents above social rent but below market price or rents and which meet the needs of Persons in Housing Need and can include:

- a. intermediate rented homes which are provided at rent levels above those of Affordable Rented Housing but below private rents;
- b. shared equity homes where more than one party has an interest in the property. For example by way of an equity loan arrangement or a shared ownership lease and there may be a charge on the loan and restrictions on price

access and resale;

- c. shared ownership homes whereby the purchaser buys an initial share in the equity of the property from the Affordable Housing Provider who may charge a rent on the unsold equity with the purchaser being able to purchase additional shares of the equity up to 100% of the equity in the property and the expression "100% Staircaser" shall be construed accordingly

and the expression "Intermediate Affordable Housing Unit" shall be construed accordingly

"Net Proceeds"

means the proceeds received by an Affordable Housing Provider from the sale of any Affordable Housing Unit to a Protected Tenant less any transactional costs and expenses associated with the sale that are incurred by the Affordable Housing Provider

"Notice of Commencement"

means written notice advising of the proposed Commencement date

"Occupation"

means beneficial occupation of a Dwelling save for the purposes of construction fitting out and marketing and "Occupy" shall be construed accordingly

"Open Market Units"

means the Dwellings that are not Affordable Housing Units

"Open Space"

means the area of the Property upon which the Open Space Scheme is to be carried out

"Persons in Housing Need"

means a person or persons registered on the Council's Housing Needs Register or a person or persons on similar registers held by the Affordable Housing Provider

"Planning Application"

means the planning application with reference 14/01823/OUT and in respect of the Property

"Planning Permission"	means the planning permission granted pursuant to the Planning Application or the Appeal
"Primary Education Contribution"	means the Primary Pupil Product multiplied by the cost generator of ten thousand eight hundred and thirty three pounds sterling (£10,833.00) each part adjusted by the percentage change in build costs from the Education Index Point prevailing at April 2014 to the Education Index Point prevailing at the relevant date each part payment is due pursuant to Schedule 3 of this Deed provided always that in the event that the number or type of Qualifying Housing Units constructed as part of the Development alters from that permitted by the Planning Permission then the County Council shall be entitled to revise the said sum accordingly AND such contribution shall be used solely for the Primary Education Purposes
"Primary Pupil Product"	means the Qualifying Flats multiplied by 0.15 plus the Qualifying Houses multiplied by 0.30
"Property"	means the freehold land shown indicatively edged red on the plan attached to this Deed at Appendix 1 and title to which derives from the documents listed in Appendix 2
"Primary Education Purposes"	means the provision of facilities for the education and/or care of children between the ages of 4 to 11 (both inclusive) towards the expansion of Alresford Primary School to a one form entry (210 place) school from its current capacity including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Primary Education Contribution and which provision and/or care shall solely relate to mitigation of the impact of the Development

"Protected Tenant"

means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 (or any equivalent contractual right) in respect of an Affordable Housing Unit
- (b) has exercised any statutory right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 (or any equivalent contractual right) in respect of an Affordable Housing Unit
- (c) has been granted a shared ownership lease by an Affordable Housing Provider in the exercise of that person's statutory right in respect of a particular Affordable Housing Unit
- (d) has purchased a particular Affordable Housing Unit with an equity loan

"Qualifying Flats"

means the total number of Dwellings that meet the definition of a Flat and that shall be constructed on the Property and shall have two or more rooms that may by design be used as bedrooms

"Qualifying Houses"

means the total number of Dwellings that that shall be constructed on the Property that meet the definition of a House and that shall have two or more rooms that may by design be used as bedrooms

"Qualifying Housing Units"

means the Qualifying Houses and Qualifying Flats

"Regulation 122"

means regulation 122 of the Community Infrastructure Levy Regulations 2010

“School Transport Purposes”

means the funding of the costs incurred by the County Council in providing free home to school transport for secondary education pupils that qualify in accordance with its Education Transport Policy to mitigate the impact of the Development on the funding of that service

“Secondary Education Transport Contribution”

means the Secondary Pupil Product multiplied by the cost generator of three pounds sterling and ninety five pence (£3.95) multiplied by one hundred and ninety-five (195) being the average days in an academic year multiplied by five (5) provided always that in the event that the number or type of Qualifying Housing Units constructed as part of the Development alters from that permitted by the Planning Permission then the County Council shall be entitled to revise the said sum accordingly AND such contribution shall be used solely for the School Transport Purposes

“Secondary Pupil Product”

means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2

“Seven Day LIBID Rate”

shall mean an assessment of the rate of interest the County Council can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow euro-currency deposits or such other rate as the County Council considers appropriate

“Unit Mix”

means the number of Qualifying Flats and the number of Qualifying Houses and the number of Dwellings that by definition shall not be counted as Qualifying Houses or Qualifying Flats

“Working Day”

means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

In this Deed:

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Councils the successors to their respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.15 Where an obligation is expressed to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. COMMENCEMENT

- 2.1 Save for this clause and clause 13 (Costs) which shall take effect on the date hereof the provisions of this Deed shall take effect upon the grant of the Planning Permission
- 2.2 The Owner covenants with the Council to provide Notice of Commencement to the Council no later than 20 Working Days prior to Commencement

3. PLANNING OBLIGATIONS AND COVENANTS

- 3.1 Subject to Clause 4 the Owner covenants to comply with Schedules 1 to 3 and 5 of this Deed
- 3.2 The Councils covenant to comply with Schedule 4 of this Deed

4. REGULATION 122 TEST

Each of the obligations in Schedules 1 to 3 and 5 of this Deed shall only apply and be enforceable by the Council and the County Council (as applicable) if and to the extent that a decision letter allowing the Appeal determines that each obligation so specified meets the requirements of Regulation 122 should be taken into account and without which the Planning Permission would not otherwise be granted

5. LEGAL EFFECT

- 5.1 This Deed is made pursuant to Section 106 of the Act and constitutes a planning obligation binding the Property which is enforceable by the Councils against the Owner and to the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 1 of the Localism Act 2011 section 111 Local Government Act 1972 and all other enabling powers
- 5.2 No persons shall be liable for any breach, non-performance or non-observance of the covenants, obligations and restrictions contained in this Deed in respect of any period during which it or they no longer have an interest in the Property or in the part in

respect of which the breach, non-performance or non-observance occurs but without prejudice to liability for any subsisting breach, non-performance or non-observance prior to parting with such interest

- 5.3 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission expires shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure
- 5.4 No part of this Deed shall or may be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 and no consent of any third party shall be required under that act to any cancellation or variation of this Deed
- 5.5 Nothing in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 5.6 If any provision or part provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired
- 5.7 Subject to the terms of the restriction on use of the Affordable Housing Units at paragraph 8 of Schedule 1 the planning obligations in this Deed shall not be enforceable against the owner or occupier of an individual Dwelling or any statutory undertaker after the transfer of statutory apparatus by the Owner to a relevant undertaker
- 5.8 Unless otherwise specified where any agreement consent approval or expression of satisfaction is to be obtained from any party under the terms of this Deed the Parties agree that the same shall not be unreasonably withheld or delayed

6. NOTICES

- 6.1 Any notice or other communication to be given under this deed must be in writing and must be:
 - (a) delivered by hand; or
 - (b) sent by pre-paid first class post or other next working day delivery service.
- 6.2 Any notice to be given under this deed must be sent to the relevant party as follows:

(a) to the Councils: to their addresses specified above and marked for the attention of the Head of Planning (in the case of the Council) and the S106 Officer Strategic Development (in the case of the County Council);

(b) to the Owner its address for service as specified above

(c) to the Developer at its address specified above for the attention of the Company Secretary

or as otherwise specified by the relevant party by notice in writing to each other party.

6.3 Any notice given in accordance with clause 6.1 and clause 6.2 will be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

(b) if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second Working Day after posting.

6.4 A notice given under this deed shall not be validly given if sent by e-mail.

6.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

7. DISPUTE RESOLUTION

7.1 In the event of any dispute or difference arising between the Parties in respect of any matter contained in this Deed including questions of value and any question of reasonableness the same shall (subject to Clause 7.5) be referred to an independent person (the "Specialist") for determination in accordance with the following provisions:

7.1.1 the Specialist shall have at least 10 years post qualification experience in the subject matter of the dispute;

7.1.2 where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or

at the direction of the President for the time being of the Institution of Civil Engineers;

7.1.3 where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors; and

7.1.4 where such dispute relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the parties or in default of agreement appointed on the application of either party or at the direction of the President for the time being of the Royal Town Planning Institute;

PROVIDED THAT the parties may otherwise agree an alternative Specialist appropriate to the nature of the dispute.

7.2 Unless otherwise agreed by the parties to the dispute the Specialist is to act as an independent expert and:

7.2.1 each party may make written representations within 21 working days of the appointment of the Specialist and will copy the written representations to the other party;

7.2.2 each party is to have a further 14 working days to make written comments on the other's representations and will copy the written comments to the other party;

7.2.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he may reasonably require;

7.2.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other; and

7.2.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision.

7.3 Responsibility for the costs of referring a dispute to a Specialist under this clause 7 including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist.

7.4 The provisions of this clause shall not affect the ability of either party to apply for and be granted any of the following: declaratory relief; injunctions; specific performance; payment of any sum; damages, and any means of enforcing this Deed and consequential and interim orders and relief.

7.5 No dispute difference or question may be referred to the Specialist unless the dispute difference or question has first been communicated from one party to the other party by notice in writing and the parties shall have met in good faith to resolve the dispute or difference amicably but have failed to do so within 14 days from the date of that meeting.

8. LOCAL LAND CHARGE PROVISIONS

8.1 This Deed is a local land charge and shall be registered by the Council as such;

8.2 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge;

8.3 Following the performance and full satisfaction of all the terms of this Deed or if this Deed is determined pursuant to Clause 5.3 the Council will on the written request of the Owner record such performance or determination in the Local Land Charges Register in respect of this Deed.

9. INDEXATION

The financial contributions payable pursuant to paragraph 3.4 of Schedule 2 and Schedule 3 of this Deed shall be Index Linked Save for the Early Years and Childcare Contribution and the Primary Education Contribution which shall be indexed as prescribed within the definitions of those contributions

10. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council by the date it is due the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

11. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Councils' statutory rights, powers, discretions and responsibilities

12. WAIVER

No failure or delay by the Councils to exercise any right or remedy provided under this deed or

by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. COSTS

The Developer covenants to pay on completion of this Deed the Council's and the County Council's respective legal costs reasonably incurred in the preparation of this Deed

SCHEDULE 1
AFFORDABLE HOUSING
PART ONE

Unless otherwise agreed in writing with the Council the Owner covenants as follows:

1. Subject to paragraph 7 to provide 25% of the Dwellings as Affordable Housing Units
2. Not to Commence the Development unless and until the Council has approved the Affordable Housing Plan in writing such approval not to be unreasonably withheld or delayed
3. As soon as reasonably practicable following the approval of the Affordable Housing Plan the Owner shall seek offers for the Affordable Housing Units from the approved Affordable Housing Provider(s) as well as the Council
4. Subject to paragraph 7 not to Occupy more than 75% of the Open Market Units until such time as all the Affordable Housing Units have been:
 - 4.1. constructed and are available for Occupation;
 - 4.2. transferred to an Affordable Housing Provider or the Council for a consideration which is the Affordable Housing Price and the purposes of this Schedule only the expression "transfer" or "transferred" shall mean a transfer of the freehold or agreement for leasehold of the Affordable Housing Units or an agreement for sale or lease agreed with the Affordable Housing Provider or the Council that has been unconditionally released for completion by the Owner
5. Any transfer of the Affordable Housing Units to the Affordable Housing Provider or the Council shall include the provisions contained in Part Two of this Schedule
6. Any Net Proceeds received by the Affordable Housing Provider or the Council shall be recycled and used for the provision of further Affordable Housing within the Council's area
7. In the event that the Owner has used its reasonable endeavours to secure the transfer of the Affordable Housing Units to an Affordable Housing Provider or the Council and those reasonable endeavours have failed to secure that transfer and written evidence of the same has been provided to the Council then the Owner may pay a financial contribution to the Council in lieu of on-site provision of Affordable Housing in an amount to be agreed in writing with the Council (the "Affordable Housing Contribution") and which shall be payable to the Council (to be used solely for the provision of Affordable Housing within the Tendring District) prior to first Occupation of more than 75% of the Open Market Units AND for the avoidance of doubt the obligations and restrictions in paragraphs 1, 4 and 8 of this Schedule shall cease to apply upon the date of payment of the Affordable Housing Contribution to the effect that the Dwellings identified as the Affordable Housing Units within the approved Affordable Housing Plan shall become Open Market

Units

8. Subject always to paragraphs 7 and 10 of this Schedule the Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing
9. To serve on the Council notice in writing not less than 10 Working Days after the first Occupation of 75% of the Open Market Units
10. Without prejudice to paragraph 8 the obligations and restrictions contained in this Schedule shall not bind:
 - 10.1. A Chargee (or any receiver or administrative receiver appointed by such Chargee) of the whole or part of the Affordable Housing Units or any successors in title to such Chargee PROVIDED THAT such Chargee (or any receiver or administrative receiver appointed by such Chargee) acting pursuant to any event of default has first complied with the provisions of paragraph 11 of this Schedule;
 - 10.2. A Protected Tenant;
 - 10.3. Any 100% Staircaser
 - 10.4. Any mortgagee or chargee of an occupier, lessee or owner of a non-rented Intermediate Affordable Housing Unit lawfully exercising the mortgagee protection provisions within the lease
 - 10.5. Any person or body deriving title through or from any of the parties mentioned in paragraphs 10.1 to 10.4 above
11. Any Chargee claiming the protection granted by paragraph 10.1 of this Schedule must first:
 - 11.1. Give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s);
 - 11.2. Have used reasonable endeavours over a period of twelve weeks from the date of the written notice referred to in paragraph 11.1 to dispose of the Affordable Housing Unit(s) to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and all other costs and expenses incurred by the Chargee in respect of the mortgage or charge;
 - 11.3. If such disposal has not taken place within the twelve week period the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free from the affordable housing provisions contained in this Deed

Provided That at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give

full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage

PART TWO

- A. The transfer of the Affordable Housing Units to the Affordable Housing Provider or the Council shall be with vacant possession and subject to those matters listed in Appendix 3 to this Deed
- B. The transfer deed for the transfer of the Affordable Housing Units to the Affordable Housing Provider or the Council shall be prepared by the Owner at no cost to the Affordable Housing Provider or the Council and shall contain:
 - B.1 a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Units;
 - B.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development on the retained land; and
 - B.3 such other covenants and reservations as the Owner may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof

SCHEDULE 2
ON SITE INFRASTRUCTURE

The Owner covenants with the Council as follows:

1. Open Space

- 1.1 Prior to Commencement the Owner shall submit for the Council's written approval a detailed scheme (including plan identifying the relevant area of the Property) for the provision of on-site public open space including recreational play space and walking routes and timetable for the execution of those works ('Open Space Scheme').
- 1.2 The Open Space Scheme shall be carried out in accordance with the details approved by the Council and thereafter the Open Space shall be maintained by the Owner subject to paragraph 3 below

2. Allotments

- 2.1 Prior to Commencement the Owner shall submit for the Council's written approval a detailed scheme (including plan identifying the relevant area of the Property) for the provision of on-site allotments including a timetable for the execution of those works ('Allotments Scheme').
- 2.2 The Allotments Scheme shall be carried out in accordance with the details approved by the Council and thereafter the Allotments shall be maintained by the Owner subject to paragraph 3 below

3. Transfer of Open Space and Allotments

- 3.1 Upon the completion of the Open Space Scheme and the Allotment Scheme the Owner shall make a written offer to the Council or its nominee for the freehold transfer of the Open Space and Allotments
- 3.2 In the event that the Council or its nominee accepts the offer made pursuant to paragraph 3.1 then the parties shall use reasonable endeavours to agree a form of transfer deed and thereafter to complete the transfer
- 3.3 The transfer to the Council or its nominee shall include a restrictive covenant to the effect that the land transferred shall not be used other than (respectively) as open space and allotments for recreational use
- 3.4 Upon the completion of the transfer referred to at paragraph 3.2 the Owner shall pay to the Council the sum of £57,500.00 as a contribution towards the future maintenance of the Open Space.
- 3.5 In the event that the Council or its nominee does not accept the offer of the Owner pursuant to paragraph 3.1, that the Owner will not use or permit or suffer the Open Space and

Allotments to be used for any purpose other than for the Open Space Scheme and Allotment Scheme

SCHEDULE 3
FINANCIAL CONTRIBUTIONS

The Owner covenants with the Council and the County Council (as applicable) as follows:

1. FINANCIAL CONTRIBUTIONS

- 1.1 Prior to first Occupation of more than 25% of the Dwellings to pay to the Council the sum of £43,740.00 (the "Healthcare Contribution") on the basis that the Council (in accordance with its covenant at paragraph 1.2 of Schedule 4) will transfer the Healthcare Contribution to NHS England for the purpose of providing additional building floorspace to increase primary healthcare patient capacity in the vicinity of the Development
- 1.2 The Owner acknowledges and declares that once the Council has passed the Healthcare Contribution to NHS England (subject always to complying with its covenant at paragraph 1.2 of Schedule 4) the Council shall not be responsible for how the Healthcare Contribution is utilised or for the repayment of any unexpended balance of the Healthcare Contribution
- 1.3 Prior to Commencement of the Development to pay to the County Council ten percent (10%) of the Education Contribution and the Owner shall not allow the Development to be Commenced before paying ten percent (10%) of the Education Contribution to the County Council
- 1.4 Prior to first Occupation to pay to the County Council thirty percent (30%) of the Education Contribution and shall not allow Occupation of a Dwelling before paying thirty percent (30%) of the Education Contribution to the County Council
- 1.5 Prior to Occupation of more than twenty five percent (25%) of the Dwellings to pay to the County Council thirty percent (30%) of the Education Contribution and shall not allow Occupation of more than twenty five percent (25%) of the Dwellings before paying thirty percent (30%) of the Education Contribution to the County Council
- 1.6 Prior to Occupation of more than fifty percent (50%) of the Dwellings to pay to the County Council thirty percent (30%) of the Education Contribution and shall not allow Occupation of more than fifty percent (50%) of the Dwellings before paying (the final) thirty percent (30%) of the Education Contribution to the County Council

SCHEDULE 4 COUNCILS' COVENANTS

1. The Council covenants as follows:
 - 1.1 to keep all sums deposited by the Owner in an interest bearing account and to provide a written form of receipt for each payment by the Owner
 - 1.2 not to transfer the Healthcare Contribution to NHS England until the Council has received a written proposal by NHS England and provided a copy of that to the Owner for capital expenditure to provide additional building floorspace to increase primary healthcare patient capacity in the vicinity of the Development AND in the event that evidence of such a written proposal is not provided to the Owner within 5 years from the date on which the Healthcare Contribution was received by the Council then the Council shall refund the Healthcare Contribution to the party that paid the contribution together with any accrued interest
 - 1.3 in the event that the commuted sum referred to at paragraph 3.4 of Schedule 2 is paid to the Council to use that sum solely for the purposes specified in this Deed and no other purpose
2. The County Council covenants as follows:
 - 2.1 Within two (2) months of receipt of the written notice given pursuant to Paragraph 1.1 of Schedule 5 to inform the Owner of the amount of the Education Contribution due at the expected date of Commencement of Development and at any subsequent triggers
 - 2.2 to place the Education Contribution when received into an interest bearing account and to utilise the funds solely for their respective Education Purposes
 - 2.3 that upon receipt of a request in writing to do so to be received by the County Council no sooner than the tenth (10th) anniversary of the first Occupation of a Dwelling but no later than one year thereafter and provided the Owner has served notice of first Occupation of a Dwelling on the County Council in accordance with Paragraph 1.2 of Schedule 5 to return to the party who deposited the Education Contribution any part of the Education Contribution that remains unexpended when such request in writing is received (together with interest accrued on the unexpended part) Provided Always that where a legally binding contract or obligation has been entered into by the County Council to make a payment in respect of Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid (if any) shall not include such payment
 - 2.4 that upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of the first Occupation of a Dwelling the County Council shall provide the Owner with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining

how the Education Contribution has in whole or in part been spent

- 2.5 In the event that the Owner fails to serve notice as set out in Paragraph 1.1 of Schedule 5 then the County Council may calculate the amount of the Education Contribution based on an estimate of the Unit Mix as it sees fit acting reasonably and demand and enforce payment of the Education Contribution at any time thereafter
- 2.6 The County Council shall deduct two percent (2%) from the total amount of the Education Contribution received under this Agreement as a non-refundable payment for the purpose of monitoring and managing the administration of the Education Contribution

SCHEDULE 5
OWNER'S COVENANTS

1. The Owner hereby covenants with the County Council:
 - 1.1 to serve on the County Council not less than three (3) months prior to Commencement of Development a notice stating the date that Commencement is expected to take place and the Unit Mix of the Development and in the event that the Unit Mix constructed or to be constructed as the Development should at any time differ from the Unit Mix notified to the County Council then the Owner shall serve on the County Council a further notice stating the revised Unit Mix within fourteen (14) days of the revised Unit Mix being decided
 - 1.2 to serve on the County Council a notice on first Occupation of a Dwelling within one (1) month thereof and on a six (6) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings the Unit Mix of Dwellings that are completed but not Occupied the Unit Mix of Dwellings that are under construction and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served
 - 1.3 In the event that the Unit Mix to be constructed as the Development does not match the Unit Mix on which the Education Contribution paid was based the Owner shall pay to the County Council as soon as the change in Unit Mix becomes apparent any additional amount pertaining to the difference between the Education Contribution paid and the Education Contribution pertaining to the Unit Mix to be constructed as part of the Development and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution
 - 1.4 In the event that the Education Contribution or part thereof is paid later than the respective due dates for payment as set out in Schedule 3 then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the due date for payment and the Education Index Point prevailing at the actual date of payment multiplied by the Education Contribution or part thereof due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the Seven Day LIBID Rate from the respective due date for payment until the actual date payment of the amount due is received by the County Council
 - 1.4.1 In addition to the requirement of 1.4 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owner hereby covenants to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) for each and

every letter sent to the Owner

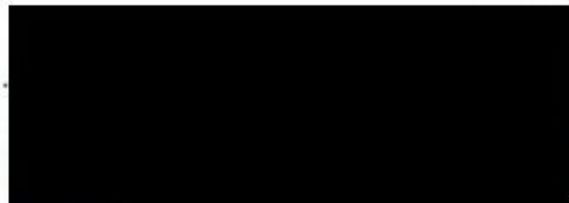
- 1.5 In the event that the Education Contribution is overpaid by the Owner then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Education Contribution or have entered into a legally binding contract or obligation to spend the Education Contribution
- 1.6 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owner and received by the County Council within one month of receipt by the Owner of the County Council's statement referred to in Paragraph 2.4 of Schedule 4 and shall clearly state the grounds on which the expenditure is disputed
- 1.7 In the event that no written request is received by the County Council from the Owners pursuant to Paragraph 2.3 of Schedule 4 or no valid dispute is raised by the Owners pursuant to Paragraph 1.6 above the Owner shall accept that the Education Contribution has been spent in full on Education Purposes

EXECUTED AS A DEED in the manner hereinafter but not delivered until the day and year first written

SIGNED as a DEED by

TAYLOR WIMPEY UK LIMITED

acting by its Attorneys

(Names) **MICHAEL DORE**
ATTORNEY and 

BELINDA FERRETT
ATTORNEY

Atto

Atto

In the presence of:

Signature of Witness:

Name:

Colvedene Court Wessex Business Park
Colden Common Winchester SO21 1WP

Address:

SIGNED as a DEED by

DAVID GEORGE GRINSTED

signature:

In the presence of:

Signature of Witness:

Name:

Address:

The COMMON SEAL of

TENDRING DISTRICT COUNCIL

was hereunto affixed in the
presence of:-



Solicitor



The COMMON SEAL of

ESSEX COUNTY COUNCIL

was hereunto affixed in the presence of:



Attesting Officer



35039

APPENDIX 1
THE PROPERTY



Property



Attesting Officer



Client: Taylor Wimpey UK Ltd
Scale: 1:1250 @ A2
Date: January 2016
Drawing No: CSA/2047/1127

Title: Section 106 Plan
Project: Land to the south of Cockayne's Lane, Alresford

Rev	Date	By	Description

APPENDIX 2

TITLE TO THE PROPERTY

The following documents comprise the epitome for the freehold title to the Property:

- i. Conveyance dated 2nd March 1960 between Arthur James Raymond and Raymond Raymond (1) and Bryan Jack Smith (2).
- ii. Deed dated 16th May 1972 between William Edwin Faulkner Pratt and Joan Hester Pratt (1) and John Stanley Howlett (2)
- iii. Conveyance dated 25th September 1989 between Nicholas Iain Gordon Hart (1) and Robin Grinsted, Mavis Joan Grinsted and David George Grinsted (2)
- iv. Conveyance dated 15th December 1976 between Carol Margaret Nutt, Clare Frances Partridge and Hilary Anne Bussey (1) and Robin Grinsted Mavis Grinsted and Mark Robin Grinsted.
- v. Deed of Retirement dated 30th March 1993

APPENDIX 3

MATTERS SUBJECT TO WHICH THE AFFORDABLE HOUSING UNITS ARE TO BE TRANSFERRED

1. All local land charges whether registered before or after the date of this Deed and whether actually registered or not and all things capable of registration as such if not actually registered whether coming into existence before or after the date of this Deed
2. All notices, orders, demands, proposals or requirements served or made by any government department or agency, public or local authority or body, statutory undertaker, utility provider or other competent person or body
3. All charges, notices, orders, restrictions, agreements, conditions, contraventions or other matters arising under planning or highways statutes affecting the Affordable Housing Units and any orders or regulations made under those or other statutes
4. All rates, charges and other outgoings affecting or charged on the Affordable Housing Units other than any mortgages or legal charges securing payment of money
5. All public or private rights of way, easements, watercourses, quasi or reputed easements, rights, exceptions or rights of adjoining owners or other similar matters
6. All necessary easements for the use of the pipes, cables, drains and other service conduits serving the Affordable Housing Units
7. All matters revealed or that might reasonably be expected to be revealed by inspection or by searches and enquiries that would have been made on behalf of a prudent purchaser of the Affordable Housing Units
8. All overriding interests listed in Schedule 3 to the Land Registration Act 2002 or are preserved by the transitional provisions of Schedule 12 of that Act
9. All conveyancing costs to be paid by the Owner